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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,883	12/09/2003	John W. Matthews	SF-2	6936

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EXAMINER

HAN, JASON

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

1 EP

Office Action Summary	Application No. 10/732,883	Applicant(s) MATTHEWS ET AL.	
	Examiner Jason M. Han	Art Unit 2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/9/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:
 - a. Page 1, Paragraph 2, Line 3: Grammatical error – “ultra violet” is one word;
 - b. Page 1, Paragraph 2, Line 4: Grammatical error – “wave length” is one word;
 - c. Page 2, Paragraph 5, Lines 3-4: “first one lamp” should be considered to reread “the first lamp” to ease readability;Appropriate correction is required.

Claim Objections

2. Claim 16 is objected to because of the following informalities: Applicant recites the limitation, “in response to actuating the switch”. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required. The examiner has assumed the best-deemed interpretation in the rejection below.
3. Claims 16 and 20 are objected to because of the following informalities: Applicant recites the limitation, “released position and the fully actuated position”. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required. The examiner has assumed the best-deemed interpretation in the rejection below.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 2875

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 2 recites the limitation "the switch input" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim. The examiner has no definite means, as to whether the applicant is referring to the first or second switch input, to base a prior art search. Further elucidation is required and the below rejection has been based on the broadest interpretation deemed possible by the examiner.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1, 16, and 20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 11, 14, and 17 of copending Application No. 10/732873. Although the conflicting claims are not identical, they are not patentably distinct from each other because applicant has

Art Unit: 2875

merely incorporated an additional switch to provide another feature to the flashlight. Such multiple function flashlights [e.g., dimming, colors] are commonly known within the art and would have been obvious to one ordinarily skilled in the art at the time the invention was made to incorporate a second switch to perform dimming/colored illumination, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

The following claims have been rejected in light of the specification, but rendered the broadest interpretation as construed by the examiner [MPEP 2111].

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-2 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Bruwer (U.S. Patent 6249089).

8. With regards to Claim 1, Bruwer discloses a flashlight including:

- A lamp [Figure 9: (105) or Figure 10: (105)];

Art Unit: 2875

- A power storage element [Figure 9: (101) or Figure 10: (101)];
- A first switch [Figure 9: (901) or Figure 10: (1004-1007)];
- A second switch [Figure 9: (902) of Figure 10: (1004-1007)]; and
- An electronic controller [Figure 9: (903) or Figure 10: (1003)] having first and second switch inputs connected to the first and second switches, respectively.

9. With regards to Claim 2, Bruwer discloses the second switch [Figure 9: (902) or Figure 10: (1004-1007)] connected directly to the second switch input.

10. With regard to Claims 14-15, Bruwer discloses a controller [Figure 9: (903) or Figure 10: (1003)].

11. Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Lebens et al. (U.S. Patent 6095661).

Lebens discloses a flashlight having a light source [Figure 1: (150)] with variable light output to a maximum output level, and first [Figure 2: (142)] and second [Figure 2: (146)] switches, and further providing:

Operating the second switch to establish a dimmed level at an output less than the maximum level; in response to actuating the first switch to an intermediate position between a released and fully actuated conditions, illuminating the light source at a dimmed level; and in response to actuating the first switch to the fully actuated position, illuminating the light source at the maximum level [Column 8, Line 14 – Column 9, Line 23; see also Column 7, Lines 10-16; Column 7, Lines 45-48].

12. Claim 20 is rejected under 35 U.S.C. 102(b) as being anticipated by Lebens et al. (U.S. Patent 6095661).

Lebens discloses a flashlight having a light source [Figure 1: (150)] with variable light output to a maximum output level, and first [Figure 2: (142)] and second [Figure 2: (146)] switches, and further providing:

Operating the second switch to establish a selected color output; in response to actuating the first switch to an intermediate position between a released and fully actuated conditions, illuminating the light source at a dimmed level; and in response to actuating the first switch to the fully actuated position, illuminating the light source at the maximum level [Column 8, Line 14 – Column 9, Line 23; see also Column 7, Lines 10-16; Column 7, Lines 45-48].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 3 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruwer (U.S. Patent 6249089).

14. With regards to Claim 3, Bruwer discloses the claimed invention as cited above, but does not specifically teach the flashlight having an elongated body with the first switch at a first end, the lamp disposed at an opposed second end, and the second switch being closer to the second end than the first end.

15. With regards to Claim 13, Bruwer teaches at least two independent electrical paths [Figures 9-10] between first and second ends of an elongated housing [Figure

Art Unit: 2875

12], but does not specifically teach the lamp at a first end and the first switch at an opposed second end.

16. However, It would have been obvious to one having ordinary skill in the art at the time the invention was made to rearrange the first switch, second switch, and lamp, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70. In this case, rearrangement of the abovementioned components could provide accommodation for different hand operations of the flashlight.

17. Claims 4-9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruwer (U.S. Patent 6249089) as applied to Claim 1 above, and further in view of Coffman (U.S. Patent 4782432).

18. With regards to Claim 4, Bruwer discloses the claimed invention as cited above. In addition, Bruwer teaches a flashlight with an elongated body defining an axis [Figure 12], and disclosing, "According to another embodiment of the invention, there is provided a microchip which can be embedded in a battery that will lend intelligence to the battery and thus, the device it is inserted into, so that many functions, including but not limited to, delayed switching, dimming, automatic shut off, and intermittent activation may be inexpensively realized in an existing (nonintelligent) product, for example a prior art flashlight [Column 3, Lines 47-54]." However, Bruwer does not specifically teach the second switch being a ring rotatable about the axis.

Coffman teaches a multi-function flashlight including a switch [Figure 1: (18)] that is a ring rotatable about an axis.

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to modify the flashlight of Bruwer to incorporate the rotatable switch ring of Coffman in order to provide a multifunction switching arrangement that is particularly resistant to corrosion and damage due to water [see Coffman: Column 2, Lines 12-17].

19. With regards to Claim 5, Bruwer in view of Coffman discloses the claimed invention as cited above, but Bruwer does not specifically teach the flashlight including a leak-resistant housing defining a chamber, wherein the second switch is positioned outside the chamber.

However, Coffman teaches, "The multi-function light preferably is a portable device formed of a waterproof, cylindrical tubular housing 12 constructed of suitable plastic materials, such as Lexan, or the like [Column 4, Lines 8-11; underline added by examiner for emphasis]", as well as the second switch [Figure 1: (18)] disposed outside a chamber defined by the housing.

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to modify the flashlight of Bruwer to incorporate the waterproof housing of Coffman to ensure protection for the electrical components within the apparatus.

20. With regard to Claims 6-9 and 11-12, Bruwer in view of Coffman discloses the claimed invention as cited above.

Bruwer does not specifically teach the second switch including a sensor component (re: Claim 6), said component being a magnetic field sensor (re: Claim 7),

Art Unit: 2875

said component being electrically isolated from the second switch (re: Claim 8), said second switch including a magnet (re: Claim 9), nor said switch being moveable through a range of angular positions and the controller being operable to establish the degree of power level based on the absolute position of the switch (re: Claim 11) or a duration of a rotational force applied to the second switch (re: Claim 12).

However, Coffman teaches, "It also is appreciated that, while collar 18 preferably is rotatably mounted on or adjacent front cap 20, this rotatable collar may be located at any desired location along device 10. The magnetic reed switches will, of course, be disposed opposite the magnetic elements mounted on the collar. As an alternative, however, rotatable collar 18 may be replaced by a longitudinal slider on which magnetic elements M1 and M2 are mounted; and magnetic reed switches S1 – S4 may be arranged in a linear array beneath this slider and individually actuated by the magnetic elements. As yet another alternative, although two magnetic elements have been proposed, it is appreciated that, if desired, only a single magnetic element may be used together with an additional magnetic reed switch. As a still further embodiment, other proximity sensing devices may be used in place of the magnetic reed switches and magnetic elements described herein. For example, Hall effect devices may be used, although such devices are known, at the present time, to draw current from, for example, battery 38 even in their quiescent modes. Still further, a position detector may be used to sense the angular position of collar 18 (or the longitudinal position of the above-mentioned slider) and to produce a plural bit digital signal representative thereof.

This plural bit digital signal may cause the selected energization of a desired one of the above-mentioned functions of light device 10 [Column 13, Lines 34-61].”

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to modify the flashlight of Bruwer to incorporate the rotatable, magnetic switch of Coffman in order to provide a multifunction switching arrangement that is particularly resistant to corrosion and damage due to water [see Coffman: Column 2, Lines 12-17].

21. Claims 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bruwer (U.S. Patent 6249089) as applied to Claim 1 above, and further in view of Hauck (U.S. Patent 5790013).

Bruwer discloses the claimed invention as cited above, but does not specifically teach a plurality of different color lamp components.

Hauck teaches a plurality of different color lamp components [Figure 6: (7-9)], wherein a controller [Figure 6: (100)] is operable in response to a signal received from a second switch [Figure 6: (4-6)] to provide a selected power to at least one of the lamp components to provide a selected output color.

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to modify the flashlight of Bruwer to incorporate the different color lamp components of Hauck in order to provide an aesthetic appeal and greater control with respect to illumination.

Art Unit: 2875

22. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lebens et al. (U.S. Patent 6095661) as applied to Claim 16 above, and further in view of Coffman (U.S. Patent 4782432).

23. With regards to Claim 17, Lebens discloses the claimed invention as cited above, including a dimming function [Column 7, Lines 45-48], but does not specifically teach providing the second switch with a rotating ring switch that encircles a housing of the flashlight.

Coffman teaches a multi-function flashlight including a switch [Figure 1: (18)] that is a ring rotatable about an axis.

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to modify the flashlight of Lebens to incorporate the rotatable switch ring of Coffman in order to provide a multifunction switching arrangement that is particularly resistant to corrosion and damage due to water [see Coffman: Column 2, Lines 12-17].

24. With regards to Claim 18, Lebens in view of Coffman discloses the claimed invention as cited above. In addition, both Lebens [Column 7, Lines 12-14] and Coffman [Figure 1: (18)] teach applying a rotational force to the switch.

25. With regards to Claim 19, Lebens in view of Coffman discloses the claimed invention as cited above, but Lebens does not specifically teach the flashlight providing a leak-resistant housing defining a chamber, wherein the second switch is positioned outside the chamber.

However, Coffman teaches, "The multi-function light preferably is a portable device formed of a waterproof, cylindrical tubular housing 12 constructed of suitable plastic materials, such as Lexan, or the like [Column 4, Lines 8-11; underline added by examiner for emphasis]", as well as the second switch [Figure 1: (18)] disposed outside a chamber defined by the housing.

It would have been obvious to one ordinarily skilled in the art at the time the invention was made to modify the flashlight of Lebens to incorporate the waterproof housing of Coffman to ensure protection for the electrical components within the apparatus.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following references are cited to further show the state of the art pertinent to the current application, but are not considered exhaustive:

US Patent 5418433 to Nilssen;

US Patent 6024471 to McDermott;

US Patent 6046572 to Matthews et al;

US Patent 6079847 to Nelson;

US Patent 6616296 to Roux et al;

US Publication 2004/0008510 to Mah;

US Patent 6793366 to Chun.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Han whose telephone number is (571) 272-2207. The examiner can normally be reached on 8:00am-5:00pm.

Art Unit: 2875

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JMH (3/24/2005)


Stephen Husar
Primary Examiner